"WRITING LIKE A LAWYER": TEACHING LEGAL ENGLISH IN A TANZANIAN SETTING

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Abstract

Outside the legal profession, "writing like a lawyer" is assumed to mean producing convoluted prose impenetrable to all but initiates. Inside the profession, however, a strong effort has been made to create well-designed writing courses for first-year law students that address the undeniable existence of poor "exemplars" which taint law students' perceptions about how to write well. Such courses try to answer the related questions of what constitutes good legal English writing and how it can best be learned. These two questions became important to me when I was asked in 1999 to create a legal English course for 22 first-year law students at a new university in Tanzania. This Third World setting and a class of non-Native English speakers cast into high relief the importance of finding appropriate answers. This paper describes the course I first designed in 1999, examines what recent ESP/EAP scholarship suggests would improve legal-English-writing instruction for students in such a setting, and describes the workbook-style textbook I am now writing for the Iringa University (Tanzania) course in legal English.

"Writing Like a Lawyer": Teaching Legal English in a Tanzanian Setting

I. INTRODUCTION

Legal English is notoriously difficult to read and interpret, an observation that has been repeated for centuries, perhaps for as long as the legal profession has existed in English-speaking countries. In *Gulliver's Travels* (1726), the British satirist, Jonathan Swift, wrote this about lawyers:

> It is likewise to be observed that this society hath a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written, which they take special care to multiply. Whereby they have wholly confounded the very essence of truth and falsehood (p. 203).

Two centuries ago, Swift was neither the first nor the last to allege that lawyers had created their own secret language--and that they had done so with questionable and self-serving intent.

This simplistic but very durable and ubiquitous "conspiracy theory" causes problems for anyone trying seriously to discuss the nature of legal English. Historically, it has bedeviled reform-minded individuals in this and previous centuries who have sought to identify and advance the use of good legal English. It has also created problems for those who write textbooks for or teach legal English in courses offered in law schools. For them, the conspiracy theory both begs the question and hinders all involved—textbook writers, teachers and students--from asking the right questions. "Secret language" is an oxymoron. People <u>do</u> learn to read and write legal English. They also can and should be taught to distinguish <u>good</u> legal English from bad. Sound pedagogy demands that questions both be asked and answered about the most effective and efficient ways to teach them to do so, whether or not their native language is English.

I became interested in the English for Specific Purposes (ESP) and English for Academic Purposes (ESP) issues of how to teach students to read and write legal English as a result of being asked in 1999 to design a legal communication course for first-year law students at a new university in Tanzania. When I returned to the US, I researched two areas: the content of legal English textbooks in the US and what ESP and EAP research could contribute to understanding how best to teach legal English to non-native speakers of the language (NNS). I found that American legal writing textbooks were largely irrelevant to the Tanzanian context for a number of reasons. I therefore decided to write a workbook-style textbook of the sort I would have liked to have found available when I was first asked to teach in Tanzania, one that would be applicable in that context and would utilize current ESP/ EAP research. I plan to return to the same institution in 2004 and to pilot the textbook there at that time.

This paper considers a set of related issues, some of them of concern to those who teach legal English to anyone, whether native or non-native speaker of English, and others of particular concern to those who teach NNSs.

A basic question is of concern to everyone teaching legal English: Is <u>good</u> legal English merely one variety of "English for Academic Purposes" (EAP) that can be written by anyone who has internalized the advice of writers like Strunk and White (1979) and Zinsser (1985)? Often, a nearly unqualified <u>positive</u> answer to this question is articulated in the pages of introductory legal writing textbooks published in the US (see pp. 23-4 below). A qualified <u>negative</u> answer to the same question has recently been given by linguists analyzing ESP and EAP (see pp. 27-32 below). This negative response deserves close attention--and raises additional questions about appropriate course materials for first-year legal writing courses being taught to NNS of English.

A second question is of interest primarily to NNSs and their teachers: What is an effective and efficient way for the NNS to learn legal English?

A third question is raised by the Tanzanian context: How can the already-difficult task of learning legal English be accomplished in the absence of print materials that, in the Third World, are hard to access?

On one issue everyone is agreed: Both the citizens of modern democratic nations whose laws are written in English and clients of those whose legal activities are conducted in English are well served only if such questions can be answered well for those who study Law.

Law students come to law schools keenly aware that "they need to learn to write like lawyers." Unfortunately, as they begin their studies, they may share some common misperceptions about what legal English should look like. When confronted with examples of obscurantist legal writing that is needlessly verbose, convoluted, and full of archaisms, many law students mistakenly assume they have just discovered the exemplars they are supposed to learn to imitate. To dispel these ubiquitous myths about "how to write like a lawyer," modern law schools in Britain and the United States typically require writing courses of their first-year students. These courses are supported by a large number of recently published textbooks, many of which firmly advocate following the basic rules of good communication: to write reader-friendly prose that is complete, correct, concise, coherent, and clear.

The following paper discusses three things: (1) my experience teaching legal English in Tanzania in 1999, (2) the question of how, given the ongoing debate about what constitutes "good legal English," to teach English for Legal Purposes to NNS in a country in which English is not the official or majority language, and (3) the introductory textbook I have designed specifically for the Tanzanian context.

II. LEGAL ENGLISH IN A TANZANIAN SETTING

A. The Tanzanian Setting for Education

This section provides background information on Tanzanian education in general and on the way those planning to enter the legal profession in Tanzania receive their professional education. As Tanganyika, the country was a colony first of Germany and then of Britain. When the country, renamed Tanzania, became independent in 1961, a critical and pressing concern was to determine an official language policy. With over 300 tribal languages and dialects spoken by its citizens, there was the dangerous possibility of setting the stage for civil conflict if one group felt privileged above the others. In retrospect, given the sorts of civil conflicts and wars still raging in neighboring countries, President Julius Nyerere deserves great praise for his decision to make Swahili the official language. An East African Bantu *lingua franca,* Swahili had been in use in Tanzania and other East African countries for centuries, but it had the advantage of not being considered any tribal group's "mother tongue." Now, forty years after Tanzanian independence, Swahili has been creolized to become a language which Tanzanians are proud to claim as uniquely their own and which many now regard as their native tongue. It has been since independence the official medium of instruction for all primary education.

Nyerere and his government also recognized the role that English had already played in education in British-colonial Tanganyika and perceived the role English was playing as a World Language in the 20th century. The government therefore decided to mandate English as the medium of instruction for all post-primary education. This has made it possible for Tanzanian students who make it to secondary school and beyond to be much more able to communicate with those outside Tanzania--and potentially more able to communicate internationally on the

Internet--than would have been possible had the government made Swahili the language of secondary and post-secondary education.

Unfortunately, over the next four decades these two ambitious goals the fledgling government had set for itself—to create universal primary education which would make most of its citizens bilingual (knowing both their tribal language and Swahili) and to foster secondary education for all qualified students who would also then learn English—collided with economic realities. Tanzania is presently one of the fifteen poorest countries in the world with a standard of living only slightly higher than Bangladesh's. Most Tanzanians are engaged in subsistence-level agriculture. UNICEF statistics for the years 1986-93 (the most current published tabulation) indicate that only 50% of Tanzania's primary-school-age boys and 50% of its primary-school-age girls were then enrolled in primary school; of those who enrolled in the first year of primary school, only 83% finished the equivalent of fifth grade. Only 6% of males and 5% of females were enrolled in secondary school. Of these, only a fraction would complete secondary school and fewer still would go on to further studies.

Apart from teachers' colleges for the preparation of primary school teachers (which operate much like 19th century American normal schools once did, giving one or two years of primary-school-teacher training to secondary school graduates), Tanzania has only one government-sponsored post-secondary institution—the University of Dar Es Salaam, located in the capital city. A few private institutions also provide some specialized forms of post-secondary education; for example, several Christian denominations have theological schools in various parts of the country.

Most regions of Tanzania have not shared in the economic development occurring at the Indian Ocean port of Dar es Salaam or near the northern game parks like the Serengeti. In such

"outlying" regions, there has always been little opportunity for secondary education and virtually none for post-secondary education. Hoping to change this picture, two Lutheran groups, the Evangelical Lutheran Church in Tanzania (ELCT) and the St. Paul (MN) Area Synod of the Evangelical Lutheran Church in America (ELCA), joined forces in the 1990's to found the first private university ever to be established in the Iringa area (the south-central highlands) of Tanzania. Their model was a four-year residential college of the sort immigrant Lutherans had established in the 19th and 20th centuries in Minnesota and elsewhere.

Tumaini University opened in Iringa in 1995. By the time I arrived in May 1999, it had set up four faculties (departments) to offer baccalaureate degree programs in Business, Journalism, Theology, and Law. Law was the most recently established of the four programs, so the only law students on campus were first-year students.

Before Tumaini University instituted its law program, the only other place to study for the L.L.B. degree in Tanzania was at the government-supported University of Dar es Salaam. Information I have about the program at Dar comes from the law faculty at Tumaini, all of whom (whether full-time instructors or visiting lecturers), if they are Tanzanians, took their L.L.B. degrees at Dar between 1971 and 1997.[1]

Because they can earn higher salaries as lawyers, faculty members for the law program had been difficult to secure, and a few had left just before I arrived.

B. Tumaini's Legal Writing Course, 1999

For the summer of 1999, I volunteered to teach for one term in Tanzania. While there, I designed and taught a course in legal English for first-year law students at Tumaini University in the south-central highlands town of Iringa.

In the US, I teach English literature and discipline-oriented research writing at a small liberal-arts college. I arrived at Tumaini expecting to help business students revise their senior research projects and found instead an unexpected situation. The inaugural class of first year law students, after taking two quarters of general composition coursework taught by Communication faculty, had gone on strike to demand a discipline-oriented rather than a general composition course. The curriculum for the law students' three-year course of study, showing how the Communication Skills sequence (LANG102-112-122) fits into it, can be found in Appendix A. The course description for the sequence reads:

> Communication Skills is a three-semester course required of students in all degree programmes. The objective of this course is to equip students with an advanced understanding of English grammar. Oral and written assignments will develop proficiency with communication styles and skills necessary for their professions. A solid background in English grammar and vocabulary are prerequisites for these courses. (*Prospectus*, 2000, p. 67)

Although this description says that assignments are designed to help students develop the proficiency necessary for their professions, it was clear that the Tumaini law students did not believe that they were being taught, as they termed it, "to write like lawyers." There is no evidence that they were comparing their course at Tumaini with legal writing courses elsewhere. They appear simply to have discovered that their writing assignments had not yet been based on the kind of legal writing paradigms they expected to be taught.

I arrived just after the law students had been on strike for about a week, and the Dean of Students asked if I would meet with them, listen to and sort out their demands, and tell him if I could structure a course to meet them. I also met with the instructor of the LANG102-112

courses, an American who was teaching at Tumaini for a three-year period, who showed me samples of students' written work and his course materials and grade-book. It was clear that he had designed his courses along the lines of a college-composition sequence typically taught in the U.S., with an emphasis on writing academic papers with clear theses and supports. Although the course description says professional communication styles would be considered, the course at this time was in fact quite general.

A probable reason for having a general course rather than a discipline-specific writing course at Tumaini was that its FTE in 1999 was about 200, meaning that both the faculty to teach it and the number of sections which could be offered were limited. From the administration's perspective, it was also clearly reasonable to require general university-level writing instruction for students just out of secondary school. The administration's decision was probably not problematic for students in the other degree programs (Business, Journalism, Theology). In these disciplines, general writing principles are fairly straightforwardly related to the writing later required in their professions. Law is, however, a discipline in which general writing principles are indeed much less applicable, and it is to Tumaini's credit that administrators were willing to address law student's concerns so forthrightly.

That the students might need a basic communication course also seemed likely, however. Like Britain, the Tanzanian government has made baccalaureate degrees of programs that would be at the graduate level in the US (e.g. Law, Medicine). First-year law students in Tanzania therefore, have just completed secondary school and have taken no university-level coursework although, to enter university, they must have received passing scores on several subject segments of the Certificate of Secondary Education Examination (CSEE) and the Advanced Certificate of Secondary Education (ACSFE).

C. Needs Assessment

Tumaini's first-year law students assumed that legal language is a specific and notoriously idiosyncratic form of formal English. I agreed with them that legal English indeed appears to differ substantially from other kinds of formal academic prose. I also knew, however, that these students' counterparts in post-baccalaureate programs in law schools in the US would have come some distance in mastering more general forms of academic English, whereas the Tanzanians had completed only secondary school.

I also agreed that the course that had precipitated their strike would not have taught them to "write like lawyers." I was not sure, however, about the wisdom of pre-empting what seemed to be the predecessory step of teaching them to write good academic formal prose--something I felt qualified to do—rather than legal English, in which I had no formal training. I did not at the time know of the work of any English for Specific Purposes (ESP) scholars specifically addressing the teaching of legal English. I had not yet encountered Vijay K. Bhatia's work or that of others doing discourse analysis of legal English (see pp. 25-30 below). Without access to a research library or to the Internet (no Internet service providers were operating in Iringa in 1999), I could not remedy these problems *in situ.* I could only proceed based on my years of teaching students to do discipline-specific writing. I told the Dean that I would try to design a course to meet their needs.

1. Attempts to Determine Students' Proficiency in English

At our first and subsequent meetings that week, I was impressed by the speaking fluency levels of many of the students. I also wanted to make some assessment of their reading skills. The only instrument I had available was a form of the pencil-and-paper TOEFL test (Form

TPH98 (1998) of the ETS Test of Written English), being phased out that year in favor of a computer-based version.[2]

The ETS TOEFL examination is designed to assess the likelihood that NNS students have English language skills sufficient to succeed in university-level coursework in the US. Although using a test instrument of this sort for a different purpose raises questions (Brown, 1996), I reasoned that it would give me a rough estimate of a student's ability to read and understand academic English. Since it was what I had to hand, and since I had rejected as less valid the possibility of making up my own test, I decided to use the two forms I had (Topics A & B), taking the fifty-five-item Section II portion of the Test of Written English as pre- and post-tests of my students' English reading proficiency. I administered the pre-test (Topic A) at the first class session and the post-test (Topic B) during part of the final examination period. The post-test was as similar to the pre-test as ETS could make it. It had fifty-five items: fifteen structure and forty written expression ones.

2. Grouping Students Based on Test Scores

Eighteen students took the pre-test; the class ultimately enrolled 22 students and these took the post-test. Appendix B shows the results of the pre-test. When I saw the pre-test scores of the Tumaini students, I noted that the range was quite large (25-85%). Of more concern to me was that the scores suggested that only four of the eighteen students would probably have done well enough on a full-fledged TOEFL exam to be admitted to a US university.

I had already decided to use a student-centered approach for teaching legal writing to this group of students. I typically make assignments both to triads and to individuals. I did this here. I assigned some written work to be done by triads and other written work to be done by

individuals. These assignments alternated, so that work they had done as triads prepared them to go and do similar assignments as individuals.

It appeared that the majority of the Tumaini students would be struggling with various aspects of any contemplated legal writing course, and that some would be struggling much more than others. I could forecast that, in addition to whatever reading and writing problems we encountered, communicating in the classroom might also be a problem. The year of language study I had undertaken before going to Africa had merely helped me acquire some "survival Swahili." Clearly, I would not be able to discuss points of law in Swahili. I therefore hoped that the triads would use both English and Swahili inside and outside of class as they discussed together the class' reading and writing assignments. I was hoping that the more proficient students would be able to help the less proficient, in some cases by translating. I also reasoned that the Tumaini students and I would be trying to make up for lost time. As mentioned above, I believed this group of students would be "skipping" some composition basics if it focused on specifically legal forms of writing. By working together, they might be able to fill in some of the gaps in their knowledge of written English patterns. In retrospect, I think the students were able to take advantage of triad-members' strengths and to minimize their weaknesses, an important thing to do in a context where it is important to protect people from public embarrassment, especially in the presence of foreigners, and in a culture which encourages individuals not to "stick out" from the crowd.

Because of their range of scores, I decided to assign the students to triad groupings rather than to let them pick their own triad-mates. I did this without explaining my rationale to them, but it was a simple one. I realized that I could assign to each group one higher-, one middle-, and one lower-scoring student. In my composition classes in the US, I do not usually stipulate

who is in a triad because a semester gives me adequate time to monitor a triad's work and to interact with its members. I thought, given our short timeframe for the course in Tanzania, that I needed to help create a context where stronger students could help weaker ones

The highest third scored between 62.5% and 85%; the middle third between 42.5% and 60%; and the lower third between 25% and 40% on the pre-test. I ranked by number the six students in each third; then I placed the three "1's" together, the three "2's" together, etc., into "Triads," making six groups of three, each with one high-scoring, one mid-range scoring, and one low-scoring student in it. Of the six resultant groups, I supposed that Triad 1, with their higher "cumulative" score, would probably do better work than the other Triads, that Triad 2 was likely to perform better than Triads 3-6, etc. I would be able to test this hypothesis as we proceeded to do the class' reading and writing assignments.

D. Creating a New Communication Skills for Law Course at Tumaini—1999

1. Creating the Syllabus with Available Materials

I was faced with several problems, some of which could not be remedied. In Tanzania, the primary and secondary schools I had visited operate without some or all of the following: textbooks, desks, blackboards, chalk, paper, pencils, workbooks, and other printed materials. Because of its Minnesota connection, Tumaini was vastly better equipped than these lower schools. It had well-designed buildings and rustic but serviceable tables and benches, blackboards, and chalk. Most buildings had electricity and there was furniture and light in the dormitories so students could study during some of the twelve unvarying hours of equatorial darkness. A recent donation of computer equipment had just arrived from the States, although the Iringa district was not projected to have an Internet service provider until after 2002. Fortunately for the new law program, Tumaini had a library stocked by US donors, including

thousands of volumes donated by St. Paul-based West Publishing, one of the largest US publishers of legal texts. Given these resources, I was unprepared for one piece of news I received from the students and had confirmed by the law faculty: there were no Tanzanian law-texts available. There was nothing available in print on Tanzanian law in the library or in faculty member's offices. Nor was I able to find any materials used by law students at the University of Dar es Salaam. The faculty teaching Law at Tumaini had received their degrees from Dar and seemed to believe that they knew its program well; they told me there was nothing to be had.

I scoured the library for what was available. Not surprisingly, given the donors, there was a wealth of material on many aspects of United States law. Tanzania, however, as a formerly British colony and current member of the British Commonwealth, was influenced by the British legal system, not the American.

I was interested in teaching legal writing to students studying case law, not another system like civil law or Shari`a (Islamic) law. The common bond for most countries using legal English today is that they were once connected to Great Britain whose modern case-law system rests on the foundation of Common Law. The United States has functioned independently of Britain since 1776; almost all of Britain's other former colonies are now linked in the British Commonwealth and all have legal systems influenced by Britain's. For the purposes of this paper on how best to teach legal English to first-year law students, the similarities in case-law systems in various countries are more significant than their differences.

As it happened, the library had numerous books on various aspects of British law, but no textbooks designed to be used in legal writing classes in Britain. If I were to teach Tumaini students to "write like lawyers," I knew I would need some texts to provide form and others to

provide content. That is, I would need both legal-document paradigms and a body of legal decisions to which all of us could refer.

It was my good fortune to find not just one copy, but a classroom set (an unheard-of luxury in Tanzanian schools), of a textbook donated by West Publishing, one of its "In a Nutshell" series: Squires and Rombauer's *Legal writing* (1982). *Legal writing* is designed for use by beginning law-students and provides several important paradigms for legal documents of the sort produced in the US. I knew that British paradigms were likely to be different, but without access to any British legal-writing textbooks, I had no access to such forms. In any case, regardless of the exact nature of a particular paradigm, I thought that the logic behind the paradigms--the logic of how to connect the rule of law to precedents established by historical cases—would be similar for the United States and British systems.

Legal writing is, as its subheading "in a nutshell" suggests, is a brief text of 250 pages. It is also a basic one. It devotes one hundred pages to a wide-ranging set of concerns: the purposes of legal writing; basic design principles for sentences, paragraphs, and essays; and the typical content of legal forms like letters, memoranda, appellate briefs and argumentative memoranda. In recognition of the typical writing problems of NS students in the US, a full 150 of the 250 pages are devoted to instruction on how to revise for punctuation, grammar, and style.

The chapter most relevant to teaching legal English writing in Tanzania was Chapter Three, titled "Small scale organization: Paragraphs, paragraph blocks, and transitions." Another section that promised to be of great value to NNSs was part of Chapter Five: "Language in a legal setting," a thirty-page glossary of words commonly misused by law students in the US. Even if some terms did differ, it seemed crucial to teach the foundational principle which law students clearly must internalize: Legal language must never be ambiguous. It seemed

important to sensitize these students to the possibility that, if they were not always alert to the dangers, they could become legal Mrs. Malaprops. There appeared to be three distinct dictums to teach in this regard: (1) that one should know the difference between "look-alikes" like *disinterested* and *uninterested* (p.126); (2) that one should distinguish the nuances of near-synonyms or semantically related terms like *holding, decision,* and *rule* (pp. 131-2); and (3) that one should not presume that the legal meaning of a "common" word is the same as its meaning in ordinary speech, since in many crucial cases this is an unwarranted, hence dangerous, assumption.

Chapter Three of *Legal writing* provided two paradigms appropriate for the Tumaini class that we would have enough class time to practice as a group and as individuals--the TEC and the IRAC patterns.

What Squires and Rombauer label the "TEC" pattern is what all general writing texts in the West stipulate as the pattern for a free-standing basic paragraph. The acronym stands for Topic Sentence, Elaboration, and Conclusion. Ironically, the class the Tumaini students went on strike against was trying to teach such basic patterns—the building blocks of essays in the Western rhetorical tradition. What seems to have bothered the Tumaini law students before I arrived in Tanzania was that they were not being taught how to "fill" such patterns with the discipline-specific content of legal discussion. Finding the TEC pattern here in a legal writing textbook, I could now use it as the basis of our first writing endeavors. For this unit, the writing process included having each triad ultimately practice writing the TEC pattern in answer to various questions about murder, having the class as a whole critique the six resulting first drafts, and having each triad revise its draft to specification. (Unfortunately, I did not bring home from Africa any samples of student writing, an oversight I deeply regret. Had a copying machine been

available on campus, I might have made copies of student work, but the nearest copying machine was at the post office in downtown Iringa, a 20-minute drive away.) Appendix C shows the only document I retained from teaching the TEC unit--a sample TEC paragraph that I produced after the class had completed this unit, a single page summary handout for the students' future reference.

The IRAC pattern, I found out when I returned to the US, has been taught to generations of law students here. Whereas the TEC is a general-purpose pattern, the IRAC is specific to the legal field. IRAC is the acronym for Issue, Rule, Application, Conclusion. This pattern is the chief building block for legal discussion in a case-law system like the United States' or Britain's. Appendix D is my post-unit handout for the IRAC unit. Where I assigned triads to collaboratively write TEC paragraphs, I assigned IRAC papers to be written by individuals. As can be seen from the IRAC handout, students struggled much more with the IRAC than with the TEC pattern. One simple reason was that the TEC paragraph was half the length (250 words) of the IRAC essay (500 words). Another reason, as the handout indicates, is that the application section of the IRAC pattern is more complex than the elaboration section of the TEC pattern. A more significant reason emerged as we worked through this unit; there were two sub-types in the IRAC essays my students had tried to produce. One sub-type dealt with an issue where the rule had not changed over the time period being discussed; the second type dealt with an issue where the rule had changed, often in such a way that the application section needed to connect a causal chain of events.

Squires and Rombauer's *Legal Writing* provided form. What should I use for content? I opted to look for books about British law to answer this question. After perusing my choices in the library, I decided on what I took to be issues universal in human legal systems: criminal

damage, murder, and manslaughter. I checked out several volumes on British criminal law and began to study them. When I determined what written assignments I would require, I both lectured on and copied relevant passages for the class. (To save on copying costs, I made copies for triads, not individuals, a move that incidentally might have encouraged triad-mates to study together outside of class.)

2. Classroom Activities

After an initial week spent meeting with students and organizing the course, classes met for the next five weeks for two hours each day on Tuesdays, Wednesdays, and Thursdays (see Appendix E). The syllabus was structured so that each week focused on one new issue in the British criminal law textbook (e.g. murder, criminal damage, manslaughter) and one paradigm in the legal writing textbook (TEC or IRAC). Writing assignments were due after each "long weekend." The final examination (Appendix F) was cumulative, with one objective section based on Squires and Rombauer's glossary of words commonly misused in legal writing, and with two long essays requiring students to produce *sans* notes their essays following the TEC and IRAC paradigms.

Class each day was fairly evenly divided into discussions of the difficult sections of the criminal law textbook's chapters and group work in triads consisting of brainstorming and pre-writing on each newly assigned writing task. Class on Thursdays ended with a full-class discussion projecting the problems and possibilities we could forecast as we launched into doing each new writing assignment.

By Week II, it became evident that the criminal law chapters were (not unexpectedly, as mentioned above) beyond the reading comprehension level of several of the students. I therefore began to assign each triad to be responsible for only a portion of the chapter, which it would in

turn prepare to teach to the whole class. This meant the triad's reporting on its contents and fielding other students' questions. As mentioned above, every triad had one student who ranked in the top third of the class on the pre-test, and Triads 1-3 each had two students who had higher scores relative to the other triads. This meant I could expect Triads 1-3 to be able to tackle more complex parts of the chapters, and I assigned chapter parts accordingly.

The two writing paradigms require both "knowledge of the facts" and the ability to reason deductively. Much class time and more outside-of-class revision time was spent on the two tasks foundational for legal writers: to be able accurately to summarize the facts and to reason correctly from them.

I scored each writing assignment based on criteria arising from the paradigm. After papers were submitted and graded, we revisited each paradigm, discussing the good and bad parts of the submitted drafts, and reviewing how grades had been assigned. After these discussions, I created an "ideal" example of the assignment as a handout (see Appendices C and D). Both individuals and triads were allowed to revise for a higher grade.

By Week III, the students and I were ready to add to our discussions of legal concepts and writing tasks a more abstract discussion about critical thinking skills. As mentioned above, I believed that teaching the forty or so "operative verbs" (e.g. list, define, compare, evaluate, etc.) that are used in examination questions would be good preparation for both the written exams and for the Advocate's oral exam for which Tumaini students would ultimately sit.

In the remaining weeks, the class moved on to triad-based writing of office research memoranda, individual-based writing of a letter to a client, and preparation for the final essay exam. Exam preparation consisted of triads brainstorming potential test questions based on our work for the entire term, and as a class critiquing these questions and organizing them

hierarchically in terms of the critical thinking skills required to answer them. The class thus produced its own final comprehensive examination study guide (Appendix G).

The course was based on student concerns and demands. Of the concerns I could not address, I referred several to other faculty members. For instance, all seniors at Tumaini do a primary research project and write up the results as their final major paper. Many of the first-year law students were anxious about this project and demanded that they see examples of senior students' writing. (As mentioned above, there were only first-year law students at Tumaini in 1999.) I therefore asked one of the other faculty members if he could secure any examples of such work submitted to the University of Dar Es Salaam, and he agreed to contact faculty members he knew there to see what might be available.

The students were also anxious about the Tanzanian equivalent of a bar exam in the US—the Advocate's (Oral) Exam, administered by the Council of Legal Education to those who have earned a law degree. Here, I was able to do the kind of service that ESL instructors are often well equipped to do for their students studying English for content areas. I was able to secure a copy of the transcript of the oral examinations conducted from June 23-27, 1997, showing the questions asked of and answered by all participants, both those who passed and those who failed the exam. I decided that the legal writing class could have as one of the course objectives a unit on how to study for such an examination. Although the students would take the Advocates' Exam orally, there is little rhetorical difference between a written and a spoken answer to the questions that they would be asked.

In my classes in the US, I typically teach students how to prepare to take essay exams by having them first study the forty or so verbs typically found in essay-exam questions. It is important to focus on the verbs because they indicate what level of critical thinking is supposed

to be demonstrated by the student giving an acceptable or superior answer. Critical thinking skills exist on a hierarchy. Using the schemata of lower/higher-level critical thinking skills, I subdivided the 1997 Tanzanian Advocates' Exam oral questions and their responses into questions requiring (1) mere comprehension of studied material (e.g. knowledge of definitions, court cases, acts and ordinances, etc.), (2) analysis, (3) comparison, (4) synthesis, and (5) evaluation. (See Appendix H.)

As can be seen, my analysis shows that this particular Advocate's Exam required little in the way of the highest-level critical thinking skills. None of the questions required evaluation; only a few required synthesis. The majority of questions required the student to know definitions, cases, duties, acts and ordinances, and limitation periods. A more difficult level of question required students to answer, for example, how they would advise a client in a particular situation, describe a particular stage in a trial, or explain points of law. I typed up copies of my analysis to give to my writing students. (To save on paper, I used a condensed "paragraph" rather than an outline format, but I hoped students would still perceive it as a kind of checklist for their own reference and that, as they progressed through their other classes, they would keep track of when they had mastered the material tested by the Council.) I alphabetized the terms for which the Council had required definitions, and I tried to structure the other sections in a logical fashion.

Analyzing the oral exam responses made me see another course objective I wanted to add to the Tumaini syllabus: to have students learn about the different levels of critical-thinking skills and to have them practice creating potential test questions at all skill-levels as well as writing, critiquing, and revising answers to the questions they had learned to pose. My experience with students over the years has shown that many are surprisingly ill-equipped to forecast what will

be asked of them in the oral or written exams for which they must sit, even those exams for which they have spent months or even years preparing. In contrast, students who have built a firm foundation by learning to analyze archetypical question-types are better able to forecast accurately what their upcoming exams will be like and thus to prepare effectively to sit for them.

III. HOW BEST TO TEACH LEGAL ENGLISH TO NNS'S

I returned to the US hoping to construct a different, context-specific communication-for-law course for Tumaini. It is indisputable that some of the needs of NNS law students in Tanzania are quite similar to those of native speaking students in the US and Britain. Both groups need to be taught to read, correctly interpret, and write legal texts. Writing instruction for both groups should certainly focus on dispelling the myth that the student is to learn to write impenetrable prose, countering this myth with instruction on how to recognize and emulate superior legal writing. Nevertheless, it seemed important to teach these general skills using Tanzanian rather than US or British legal documents.

A. Current Legal Writing Textbooks in the US

My plan was to find authentic texts and then to design a course that would teach Tanzanian first-year law students how to read such texts with enhanced comprehension and how to discuss and write about them in ways acceptable to the specialist community that knows "how to write like lawyers." The textbook I envisioned would be one in which reading leads to writing which in turn leads to speaking. (Listening would be implicit, since a class using such a textbook would consist of both teacher explanation/lecture and of small-group activity inside and outside of class.) Mr. Mollel had already indicated a willingness to look at drafts of the workbook, and I have since contacted others who might do so as well.

My research led me to several realizations. The first was that, although Tanzania was a former British colony and is presently a Commonwealth country still sharing a legal system rooted in British law, significant divergence from British law occurred even during the colonial period. Divergence since independence in 1961 has naturally accelerated. Thus, British texts are not much more likely to be relevant than are US ones.

A second realization came as the result of looking closely at how law students—NS or NNS---are taught legal English in the US. An analysis of legal writing textbooks showed that they try to teach good legal writing by stressing both the "Do's" and "Don't's" of basic communication. Clearly, this is an attempt to counter the impact of some of the exemplars law students must read and study. As mentioned above, law students may share the common misperception that learning to write "like a lawyer" means producing the densest of argots, convoluted prose impenetrable to all but those initiated into law's sacred rites. The American textbook available to my students in Tanzania had a chapter devoted to explicating the following dicta:

> Use words in their literal sense.
>
> Use simple, familiar words.
>
> Use concrete rather than abstract words.
>
> Omit legal archaisms.
>
> Avoid synonyms; use the same word to refer to the same thing.
>
> Avoid qualifiers.
>
> Avoid equivocation.
>
> Avoid literary devices.
>
> Avoid jargon from other fields. (Squires & Rombauer, 1982, pp. l02-109)

I have some questions about how helpful this sort of advice is even for the NS students to whom it is addressed. Legal English appears, to use Wittgenstein's term, to be a very complex "language game." Yet many legal writing texts appear largely to replicate the advice given in undergraduate composition texts designed for the generalist writer. The main difference often appears to be simply that the examples in legal writing textbooks are taken from legal documents. I thought that trying to counter any enduring misperceptions about the nature of good legal English with advice designed to produce good general English—or even good non-specialist academic English—is unlikely to work well in part because it seems unlikely that law students could apply this advice successfully to their writing assignments. Even were they able, I argue below that doing so before becoming proficient players of legal language games is likely to create a worse rather than a better end product.

As I searched for legal writing textbooks more able to address the needs of Tanzanian law students, I discovered a new subset: textbooks created for NNSs who are studying <u>inside</u> the US or Britain and who are unfamiliar with the US legal system. An example is Lee, Hall and Hurley (1999). This textbook acknowledges that the NNS student is simultaneously trying to negotiate a foreign conceptual environment (law) and a foreign linguistic environment (English). It therefore begins with basic information about the culture and legal system of the US and proceeds with graded exercises to teach the student how to read, write about, and discuss legal documents and concepts. It does this using a workbook format that combines teaching the reading and reasoning skills required of all American law students with ESP help for the NNS. Lee, Hall, and Hurley cover seven broad areas of US law (e.g. torts, product liability, etc). Because it is so contextualized to the American law student's situation, however, their textbook would not be "a perfect match" for the Tanzanian student's. On the other hand, precisely

because of this integration, it offers a valuable paradigm that can inform the textbook I envision creating for Tumaini.

A single chapter in Lee, Hall, and Hurley's text contains information and graded exercises ranging from very simple ones to those requiring critical thinking. Their chapter on torts, for instance, has basic exercises in genre identification, legal vocabulary, and reading for details; more complex ESP-style exercises in recognizing syntactical patterns, parsing, and sentence combining; interactive exercises requiring group work or role-playing; and writing exercises requiring summary, argumentation, or analysis. Because the authors posit a student already very familiar with a range of textual materials, however, they do not give as much instruction in rhetorical and genre analysis as I think necessary for the Tanzanian law student who has had little prior access to printed texts.

My research uncovered no textbooks written for NNS students of English studying law outside the United States or Britain. Apparently, as I found in Tanzania, such students may be fortunate to have access even to texts written for American or British NS students. Helpful though such texts may be, since they focus on introducing a student to a foreign culture, they are unlikely to be as helpful as a textbook produced for the context—in this case, for students <u>not</u> in a foreign country but using a foreign language to learn some significant new things about their own culture—its legal system.

B. Conclusions About Important Content for a Contextualized Textbook

My analysis of available textbooks made it clear that some of what they contain should indeed inform the creation of a contextualized textbook for Tanzanian first-year law students. Chief among these is an introduction to culture—not the culture of a specific country, but the culture of the legal discourse community. Rombauer (1981) and Lee, Hall, and Harley (1999)

indicate some ways that a student can be initiated into the culture of and logic behind a case-law legal system. Each kind of legal document reveals a different legal culture "slice of life," and some of this implicit knowledge can be made explicit for the student.

Introducing classical rhetorical theory is also important, since law reports and journal articles in the Western World follow a pattern developed in 5th c. B.C. Athens and articulated in textbook form by Cicero in the 1st c. B.C. The benefits of a classical rhetorical education are more applicable to law students that to those in almost any other discipline because classical rhetorical theory arose to explain how to argue for and against certain legislative actions and how to defend the legality of actions. British and US law directly descend from Roman law, and part of the culture of the legal discourse community in English-speaking countries takes on the character it does in an conservative effort to keep that exact tradition alive. Learning classical rhetorical theory, then, is critical to learning to "write like a lawyer." It also has other notable benefits,

Explicit rhetorical instruction helps students in law school both to access difficult texts and to write critically about them. It also helps students develop the life-long skills of writing and revising self-critically. Knowledge of this sort has an added application beyond law school since understanding the Western rhetorical tradition has applications both for reading with increased comprehension throughout life and for writing well to clients, not to mention to other attorneys and judges.

Also included in a textbook for Tanzanians should be a focus on vocabulary. The glossary of easily misunderstood or frequently confused terms (cf. Squires and Rombauer, 1982) is a very focused example of useful vocabulary study, and it could be contextualized to include country-specific terms liable to such misinterpretation. But it also seems that there is good

reason to broaden vocabulary study to its widest margins--to make students cognizant of the need to identify new words they encounter in their reading and should practice using in their writing.

Ironically, much of the content of American textbooks can be dispensed with in the Tanzanian context. Many American textbooks spend substantial time on instruction in revising for punctuation, grammar, and style. This kind of instruction, forming the vast bulk of some American legal writing textbooks, is an index of the poor state of undergraduate writing instruction for NSs in the US. I have found no parallel needs among NNSs, whether I was teaching them overseas or in the US. Even if such instruction is needed by NNSs, it can be found in composition-handbook-style guides to revision that are readily available and relatively inexpensive because they are produced in quantity for the generalist writer. Therefore, reproducing textbook segments on editing-to-reduce-error does not seem important for the contextualized NNS materials envisioned here.

C. Additional Insights Gained from Discourse Analysis: V. J. Bhatia

An ESP scholar whose work appears to have the most helpful insights about the necessary content of a legal English textbook for NNSs is Vijay K. Bhatia, who teaches at the National University of Singapore.[4] His insights about legal English, based on Discourse Analysis, go significantly beyond the instructions given in the usual English-language legal writing textbook and have interesting implications as one envisions future textbooks for students studying law outside the US and Britain.

Bhatia's approach is innovative. He does not start where most legal-language reformers start, with Strunk-and-White-style advice about writing good generalist prose. Instead, he begins with the assumption that, when confronted by an alien speech community, one must ask not only <u>how</u> but <u>why</u> this particular speech community is using language as it does. In other words,

influenced by Wittgenstein, other philosophers of language like Searle (1969) and Austin (1975), and linguists like Saussure, Bhatia works with concepts like "language game," "perlocutionary force" [rhetorical purpose]," and "difference" in language to explicate how and why legal discourse takes the shape it does. Asking both questions—how and why--sets the stage for a new and insightful analysis into which parts of a legal discourse are essential and why some of them must remain complex. The traditional Strunk and White approach values simplicity over complexity, but is unable to attend to why some language games are by nature and necessity complex, technical, and hermetic.

Bhatia's analysis offers a new slant on the question of whether legal English can be made "reader friendly." To put it simply, Bhatia restructures the discourse by asking what cannot be "reformed out" of a piece of legal discourse and still leave its communicative purpose intact. Law students and their writing instructors should find Bhatia's answer to this question to be more helpful than the usual dictums, like those listed above, given in standard legal writing textbooks (e.g. to avoid archaisms, use simple and clear language, etc.).

Bhatia (1993) takes John Swales' (1990) definition of *genre* as "a recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs." In his introduction to *Analyzing Genre* (1993), Bhatia specifically locates himself within the set of scholars interested in applied rather than theoretical linguistics; in analysis of specialist and professional rather than ordinary language use; and in deep, ethnographically informed rather than surface (*i.e.* merely linguistic) analysis of English. Bhatia notes that models of discourse analysis have "steadily changed in the past three decades, moving from surface-level description to more functional and grounded description of language use" (p.

5). In practice, this means that the kind of discourse analysis he does, in addition to its 20th c. linguistic roots, utilizes insights from the tradition of thick ethnography in an attempt to understand why a particular language community uses language the way it does.

At present, discourse analysis pursues several lines of reasoning about language, and especially about written texts. Bhatia is careful to distinguish his work from that of scholars interested in the now-current reader-oriented discourse analysis which, in the ESP arena, follows the same late-20th century philosophical tradition foundational to the more widely known Reader-Response school of literary criticism and a later development, Deconstruction.[3] The usual charges leveled at Reader-Response and Deconstructionist critics are that their stance is too relativistic and subjective, and the debate is usually carried on at a philosophical level. To Bhatia, the problem with the Reader-Response/Deconstruction critical assertion that readers are the final arbiters of a text's meaning (and that texts therefore ultimately deconstruct) is that this assertion ignores the existence of certain kinds of texts created by specialist communities, in particular the legal community based on British Common Law and case law. In relation to the subject of the present paper, Bhatia would say that a reader-response or deconstructionist approach to a legal text in English is fundamentally flawed because it ignores the reality that that legal text must, of necessity, be "decontextualized." A particular reader at a particular time and place is not allowed to be a subjective interpreter of a legal text. Put another way, to borrow Saussure's terminology, the specialist community of lawyers using the English language has altered the free-radical nature of language by setting up its own "positive terms" for its language, by having the history of common law and legal precedent anchor the meaning of the text.

In brief, Bhatia critiques reader-oriented discourse analysis for tending "to simplify the relationship between the production and the interpretation of discourse in many of the

conventionalized academic and professional contexts" (p. 9). Bhatia here touches on a reality that my Tumaini University law students intuitively understood: that the legal profession may be said to consist of those mastered by rather than masters of legal language. The ongoing task of the law student is to learn that the legal text does exist outside his or her brain. In Bhatia's words (as he analyzes a sub-genre of legal English), "Legislative writing is highly impersonal and decontextualized in the sense that its illocutionary force holds independently of whoever is the 'speaker' (originator) or the 'hearer' (reader) of the document" (p. 102).

A contextualized introductory legal English textbook should be based on insights like Bhatia's because they help explain the irreducible complexity of legal writing. Thus they should be of interest to the larger legal community engaged in reforming legal English as well as to those whose task it is to teach students to write it. Bhatia's type of rhetorical analysis deserves a section in a legal writing textbook. Well-taught, such an analysis would enable a law student to begin to internalize the criteria that govern when a legal text can be simply subjected to clear-language reforms and when it cannot. Teaching rhetorical analysis at this level would go well beyond both the current Strunk and White and paradigm-based models of teaching legal writing.

Time and space do not allow many specific examples of the several kinds of legal language Bhatia analyzes. One example—legislative writing—will suffice to show how Bhatia locates the irreducible complexity of this form of legal English in what he terms the "double bind"—the simultaneous demand that the language be unambiguous but also all-inclusive. Bhatia says, "It is this seemingly impossible task of achieving the dual characteristic of clarity, precision, and unambiguity on the one hand, and all-inclusiveness on the other hand, that makes legislative provisions what they are" (p. 103). Legislation must be as precise as possible while still referring to every conceivable contingency.

The end product—in this case, the legislative statement—is the result of agreement in the legal community about what the statement must do. The conventionalized communicative purpose of the legislative statement creates its form. As Bhatia says,

> The typical use of complex-prepositions, binomial and multinomial expressions, nominalizations, the initial case descriptions, and a large number and variety of qualificational insertions make syntactic discontinuities somewhat unavoidable in the legislative statement and, to a large extent, account for the discourse patterning that is typically displayed in such provisions (117).

Bhatia here alludes to one major characteristic of legislative language: its use of binomials and multinomials. The existence of these "doublets"—phrases like "unless and until," "wholly and exclusively" and "signed and delivered"—is a characteristic of legal prose that non-specialists often regard as avoidable redundancy. The student following textbook advice to avoid redundancy might feel duty-bound to eradicate binomials and multinomials, but Bhatia explains why deleting one of the two terms would, in fact, be an inappropriate revision to a piece of legislation. The discourse structure as it stands, he asserts, is appropriately both "complex" and "compound." He argues that binomials and multinomials are "extremely effective linguistic device[s] to make the legal document precise as well as all-inclusive" (p. 105). As an instance of this, Bhatia unpacks a paragraph-long single sentence from a piece of Indian legislation (Figure 1). His diagram makes it clear how this single sentence succeeds in encompassing "at least forty-eight different ways of accepting gratification and nothing less than thirty-two ways of accepting gratification without consideration" (p. 110). All of this is achieved by the careful use of bi/multinomials. Bhatia goes on to show how bi/multinomials contribute to the larger

structuring of the logic of a legislative statement as the attendant qualifications interact with and move against the main provisionary clause (Figure 2).

It seems clear that both NS and NNS law students would benefit from careful and explicit instruction in Bhatia's kind of rhetorical analysis because it will enable them to explain why certain linguistic structures have been developed by their particular specialist legal community and how those structures are to be used properly and even elegantly. The benefits of this sort of teaching are far greater than giving them writing advice of a general nature most useful for the creation of non-specialist English prose.

Unfortunately, there are few linguists like Bhatia doing discourse analysis of legal English. Much more of this kind of analysis needs to be done.

IV. THE PROCESS OF CREATING A CONTEXTUALIZED TEXTBOOK

My experience teaching in Tanzania and my subsequent study of textbooks available in the US made me conclude that Tanzanian law students would be well-served by having authentic texts in hand. This would help eliminate the need to extrapolate from a different country's legal context to their own. Also, there is growing awareness among EFL professionals that use of authentic texts is beneficial to EFL students. I decided I would try to introduce very basic concepts using unaltered legal documents from Tanzania.

For Tumaini students even to have such texts to study would be to take a significant step beyond the situation I encountered in 1999. As mentioned above, print materials of any sort are scarce. In addition, it would help students meet the objectives of the Faculty of Law for them. One such objective is implied in the description of the L.L.B. programme: "[to emphasize] the dynamics of the law, including how the law relates to social change and to society as a whole" (Prospectus, 2000, p. 34). Like many developing democracies, Tanzania is still experimenting

with and perfecting the rule of law. Tumaini hopes to educate Tanzanian lawyers who understand the development of law in Tanzania and who understand how law has affected and continues to affect social change. It seems critical to have such students studying their own legal documents and their own legal history.

I also concluded that, in developing materials that would teach law students how to read and write about legal texts, I wanted to base my insights on the work of ESL and EAP specialists and others doing research in discourse analysis rather than creating a contextual textbook modeled on extant US textbooks. The insights from discourse analysis have only recently been applied to the ESL/EAP context. To do this specifically to the teaching of legal English will be an original contribution to the field of ESP.

A. The Process of Materials Development

In ESL literature, there are many theoretical discussions of curriculum development, including the development of materials. Useful discussion of this process is found in two of Kathleen Graves' books: Teachers as Course Developers (1996) and Designing Language Courses: A Guide for Teachers (2000).

Graves' guides to course design and curriculum development are valuable for two reasons. The first is that they recommend student-centered learning, a now well-established trend in the U.S. Student-centered learning was something I had already tried to focus on in the initial course I taught at Tumaini in 1999. I was happy to find that, since the first weeks of the term had been lost to their strike, my students were very adept at working efficiently together. We accomplished more good writing than I had expected by doing so. (Ironically, the absence of educational materials has helped Tanzanian students who successfully complete secondary school to learn together in a way that should delight current advocates of student-centered

learning, although I do not recommend achieving this salutary situation by depriving students of written texts). The crying need for a "teacher as facilitator" in the Third World seems to me to be for the teacher to provide access to texts, both literally by placing them in the students' hands and metaphorically by teaching students to comprehend them when they read them.

A second reason that Graves is valuable is that she stresses the flexibility of the steps she lists as integral to the process of curriculum and course design. Which one should be the first (and which the successive steps) depends on the particulars of one's situation. Also, the "steps" taken should not be conceived of taken linearly. The process, she cautions, will in reality consist of overlaps and repeats.

On the subject of materials development, Graves (2000) lists a number of considerations under six headings: Materials, Learners, Learning, Language, Social Context, and Activity/Task Types. How the materials I have created meet these requirements will be discussed below.

B. Authentic Texts, Varied Media

Graves suggests asking if materials are authentic and varied. Authenticity had been a paramount criterion for me from the beginning. Yet, even after I returned to the US, finding legal documents produced in Tanzania proved to be time-consuming and difficult. Although I kept checking throughout the year, I could find no legislative acts, case reports, or discussions of Tanzanian law on the Internet. I did find that several libraries in the US hold bound copies of The Tanzania Law Reports, but no library lends them via inter-library loan. Librarians told me that I could order a photocopy of a particular case if I had exact case numbers and years, but phone conversations with librarians looking for some of my requests suggested that many of the cases I had found in article footnotes were either not actually in print or not in the volume cited. As a result, my actual criteria ended up being that a case I had found cited was actually available

for photocopying in the US. Another criterion I wanted to meet was currency because authentic course materials should be as up-to-date as possible, but in the end I found that there were virtually no US library holdings of law reports produced after about 1995. (It appears that this may be due to the Tanzanian government's not having yet published post-1995 reports.) Ironically, I would have liked to find the texts of laws central to my chosen journal articles' discussions, but this also was not possible. In my research, I discovered that many of the cited High Court of Tanzania rulings are "unreported." This means they are not published in *The Tanzania Law Reports*, and presumably are kept in some government archive unavailable to the average researcher. Future revision of the workbook may involve finding law reports of more interest or relevance to students.

When I broadened my search for authentic materials to include those <u>about</u> Tanzanian law, I had more success because discussions of Tanzanian law are sometimes published in international law journals. A search for current articles (within the decade) yielded only about 15. Of these, many were so specialized that I though them irrelevant to first-year students. From the journal articles available to me, I ultimately chose three I thought would serve as reasonable texts for the workbook because they give background information about the historical development of Tanzanian law, and they deal with topics about which Tumaini law students already would have some knowledge: human rights, marriage contracts, and judicial powers.

Finally, in December 2001, I logged onto the Internet and—to my surprise--found one piece of legislation available in full-text: the Bank of Tanzania Act of 1995.

In the current discussion about looking at legal texts (not at other media), "varied" to me meant finding types of texts in which language is used in a unique way. Legislative language, the language of law reports, and the language of journal articles indeed are all quite different.

Having in hand three types of legal texts—legislation, case reports, and academic discussions of legal issues—meant I could begin to develop the textbook/workbook I had envisioned. I plan to ask publishers' permission to bind these as full texts (one piece of legislation, two law reports, and three journal articles) as an appendix in my workbook so that the question of hands-on access will be answered in the affirmative for the communication sequence at Tumaini.

C. Texts Relevant to Learners' Experience and Target and Affective needs

In their law classes--all taught in English--first-year students at Tumaini study Constitutional Law and Legal Systems of East Africa, Law of Contract, and Criminal Law (see Appendix A). In my 1999 course, I had developed course content using a British textbook on criminal law. What we discussed and wrote about was thus reinforcing material they had learned in one of their three year-long courses. That this was evident was clear from how involved they became in discussing and writing about two concepts central to criminal law: *mens rea* and *actus reus*

The three articles chosen for my workbook cover constitutional law in a discussion of human rights and judicial powers (and to some extent, criminal law) vis-à-vis legislation like the Preventive Detention (Amendment) Act of 1985 and contract law in a discussion of marriage contracts. The two case reports concern vicarious liability of government officials and a wrongful-death suit. The Bank of Tanzania Act is not directly related to any of the first-year law classes, but it was the only piece of legislation available, so the subject of its relevance must remain moot.

The question of target needs is more important, actually, than relevance since theoretically almost all types of legal questions will eventually be covered in some way in the

Tumaini three-year curriculum. Target needs are of two sorts: current needs of students qua students and future needs when the students become lawyers.

Despite my description of students' present lack of access to legal texts, the hope is that this is a time-limited situation. If the Bank of Tanzania Act is available on the Web this year, presumably the government of Tanzania will continue to post additional pieces of legislation, at least those demanded by international trade and commerce. There is no Internet access in Iringa yet, but the projection was that there would be access by the end of 2003. The lack of Tanzanian materials in the Tumaini library in 1999 may have been due to its being the first year of the law program. Since then, the group of students I taught has graduated (in October 2001). The current enrollment in the law programme is four times what it was in 1999. There will be continued institutional efforts to meet the needs of this student constituency for library materials.

Even were there no expectation that Tanzanian legal texts would become more available to Tumaini students, it is undisputed that they will need to be able to read them when they enter the professional world. Thus the questions of when, and how they will encounter legal texts is answered: soon enough to warrant making their Communication Skills course focus on them. Furthermore, were they to continue reading American and British texts for course materials, the three types of legal English covered in the workbook are consonant with American and British texts.

The affective need most basically addressed by the workbook is the need to feel that one can access a text even though it poses significant difficulty, since one can learn a step-by-step process to do so. Each chapter of the workbook moves from simple to complex steps in accessing the text and in writing about it. Each chapter replicates these same steps, recycling what is learned about reading one kind of text to show how it applies to reading another kind of

text. Other affective needs are met by the emphasis on students working together to solve problems both of interpretation of texts and of creating written works themselves.

D. Discovery, Problem-Solving, Analysis and Development of Specific Skills/Strategies

In general, a very high level of problem-solving and analysis is elicited by the full-fledged writing assignments at the end of each chapter which ask the student to respond to the meaning of the whole text and to questions brought to the text from "outside" by the readers. These high-level writing assignments are preceded by lower-level ones that focus on discovery "inside the text" of the more limited meanings of portions of the text, demonstrated by simple writing such as filling in the blanks in answer to specific questions and by more complex writing like paraphrasing or summarizing portions of the text or drawing out inferences. The student who works step by step through each chapter, focusing on parts of the text/s, should feel capable by the end of the chapter to write at some length about the whole text.

There are many specific skills and strategies that are covered in the workbook, but those that are emphasized as central are the skills of skimming, scanning, and making useful reading notes; becoming efficient in studying new vocabulary; learning how to analyzing the syntax of archetypical (and problematic) legal English sentences; and summarizing and responding to the content of the text. Each chapter is divided into four parts based on this hierarchically organized set of skills, labeled as "Focus on Organization, Focus on Vocabulary, Focus on Problematic Sentences, and Focus on Content."

"Focus on Organization" specifically teaches some basic pre-reading issues (e.g. scanning for subdivisions, looking for key words and major ideas, formulating questions before reading) and some other basic issues of print-text conventions (e.g. headings, footnotes, citations, etc.) that may be less understood by Tumaini students than by students elsewhere who have had

wide-ranging access to printed materials for most of their education. Required written responses in the organization section are brief and basically exist to reinforce the idea that students should be active, not passive, readers and should be learning to make carefully considered inferences from the moment they encounter a text.

"Focus on Vocabulary" is the only section which is virtually the same in every chapter, with text-relevant expansions of the following two injunctions: to circle all words not definable by context, and to write definitions down. These are tasks to be undertaken when the reader is unfamiliar with a vocabulary item. A separate but related task is discussed at length in the chapter on reading legal essays: finding and noting allusive language. Here the task is not to define words but to recognize that they refer indirectly to something else, something the student may not fully understand. For allusive language, students are taught first what it is and how to recognize it and then are instructed to make notes and ask questions in or out of class when they encounter it. Students are taught that many writers use allusive language, and some do so purposively to separate members of an ideal audience from the less-than-ideal ones who do not "catch" their allusions. Allusions are not always "elitist," however; they abound in print media. For instance, *Newsweek* often prefers allusive titles (e.g. 'The Gold Rush" [a reference to an 1848 event in U.S. history] to describe Olympic athletes' vying for gold medals). Allusions in any piece of writing are problematic for at least five reasons: (1) they require shared knowledge which some readers do not have, especially if it is culture-specific; (2) they are not flagged by the same kinds of visual textual clues (e.g. quotation marks or parenthetical citations) usually present when a source is cited; (3) they are often cryptic, so that a very few words suffice to resurrect a complex whole (e.g. The four words, "to be or not…," resurrect not only Hamlet's soliloquy but the meaning of the whole play—but only if one knows Shakespeare's text); (4)

they do not necessarily consist of words the reader does not know (e.g. *to, be, or, not*) but the reader may realize s/he does not know what they "mean"; and (5) they are often used playfully (e.g. "Gold Rush" above), as a complex kind of punning, a inside joke which is lost on outsiders. For legal texts, an additionally reason that allusions may cause difficulty is that they are not discipline-specific but may come from any field of study (e.g. psychology or philosophy).

"Focus on Problematic Sentences" is where the idiosyncrasies of each of the three kinds of texts are worked out in detail. Each of the three raises different issues of surface language taught by focusing on different functions or categories like pronoun reference or nominalizations. The choice to create a large number of workbook exercises that focus on naming and analyzing sentence-level characteristics was made because these are manageable basic tasks. A focus on macro-characteristics—the organization of larger units and of the text as a whole—comes into play only significantly in the third chapter where the final student writing assignments require summarizing entire essays.

"Focus on Content" is the final segment of each chapter, the segment which asks the student to move from interpreting the text to writing at some length about it. The first three sections take reading as the most significant task, with writing being a way to reinforce comprehension. "Focus on Content" inverts this emphasis. After students have taken the necessary steps to comprehend the legal texts in question, they can now write from their internalization of this content and from their larger understanding of the law. Legal writing courses in the US and Britain have traditionally taught writing by paradigms like the TEC and IRAC patterns. Section IV is where several of these paradigms for summarizing the content of legal discussions are introduced and used. Basically, law students are expected to be able to

summarize accurately and to apply a rule of law to a particular case. One hopes they will feel by the end of each chapter that they have begun to "write like lawyers."

E. Language: Grammar and Vocabulary and Integration of Skills

As mentioned above, a focus on vocabulary is one of the core foci of each chapter. This is the only focus that is repeated nearly unchanged in each of the three chapters. Chapter 1 suggests a basic strategy for efficient vocabulary study and Chapters 2 and 3 reiterate it. Chapter 3 on reading articles adds to these reiterated points about vocabulary study the new dimension of distinguishing between words that are unknown merely because it is the first time they are being encountered and words that are problematic to learn and understand because they refer (allude) to a larger conceptual field (e.g. new vocabulary referring to Marxist ideology, the history of constitutional law, etc.) The suggestion is that students learn to flag these "allusive" vocabulary words and to raise questions in class about how to learn what they mean in the context of a particular text. The benefit of doing this is that it translates into students' being more self-assured when it comes to the high-level tasks of writing analyses of or critical commentaries on a text.

Clearly the workbook emphasizes reading and writing, but this is balanced by structuring assignments to be done as pair- or group-work. The workbook is also meant to form a foundation for class time to be utilized by the teacher introducing new concepts sequentially and then eliciting in-class discussions (again in large or small groups) of vocabulary, the characteristics of texts and of language, and the interpretation of and response to textual meaning.

F. Authentic tasks

As mentioned above, a foundational value for the workbook is student-centered education. All of the tasks, especially if the teacher uses the workbook to elicit good group or pair work, ultimately mirror the activities of lawyers in a law firm. As in any classroom, the teacher will need to be sensitive to making groupings and group activities work well for all involved. The workbook attempts to vary the kinds of activities suggested and to make explicit some of the purposes for engaging in those activities. Choice of activities has been influenced by books like Willis' (1996) *A Framework for Task-Based Learning.*

At present, there is no teacher's manual to go with the workbook, but that can be created, especially after the workbook is piloted. If all goes well during my sabbatical in 2004, I hope to do some work with colleagues on how to design the Communication Skills sequence so that faculty new to teaching it are given some in-house training about its goals, objectives, and methods.

V. THE PRODUCT: A WORKBOOK/TEXTBOOK ON READING AND WRITING LEGAL ENGLISH

A. Chapter 1: Legislation

Finding the one piece of Tanzanian legislation was crucial to my being able to begin to write the workbook, because I believe that focusing on legislative language is the best starting point for my target group of students. There are several reasons for this. Although the surface language of legislation is idiosyncratic and most readers find it quite difficult to read and comprehend, the conceptual content of legislation is quite easy to understand when compared to the discursive patterns of intertwined narrative, exposition, and argument found in law reports and academic journal articles. Further, the explication of the structure (i.e. of core sentence and qualifications) of legislative language is standard fare in first-year legal writing texts. Such textbooks typically teach the student how to diagram the parts of a legislative sentence. (See

Figures 1 and 2.) Also, legislation is printed in outline form, with sections and sub-sections clearly numbered. Each subsection is rarely more than a few sentences long, and each section usually provides a coherent smaller unit that can be focused on in a natural way; it is not necessary to read or refer to the whole act to discuss one of its sections. Most importantly, although I found few EAP theorists specifically addressing the discursive character of legislative language, I did find some. Vijay K. Bhatia is the most important of these; his work provided both explication of legislative language and a schema for organizing the first chapter of my workbook.

Using Bhatia's schema partially addresses the issue of specialist input into the design of the workbook. Although I will be seeking feedback from the law faculty at Tumaini and elsewhere about my book and revise it based on piloting it *in situ* in Tanzania, I think that the whole will be strengthened by being based on the work of EAP specialists.

B. Chapter 2: Case Reports

When a beginning law student turns from reading a piece of legislation with its complicated sentences filled with qualifications to reading a case report, he or she may breathe a sigh of relief. The surface language is much simpler. Case reports, although frequently prepared by subordinates on a judge's staff, are nevertheless essentially the work of the judge who is the report's named author. The surface language of such a document is not necessarily difficult to read. Since it bears the stamp of an individual author, it may be hard or easy to read depending on that writer's individualistic style. In fact, some judges make a point of writing in a very conversational vein, using quite simple language.

Also, in some ways the content of a case report is easier to access than the very abstract content of legislation. Fortunately, the case report has human interest, since in essence it is the

record of a legal case--the story of someone seeking justice for an alleged wrong. In general, well-written narratives make gripping reading material, and a well-written case report may indeed have this character.

The relative simplicity of the language of case reports and the narrative interest does not mean, however, that beginning law students will have few problems in reading and writing about them. Case reports are difficult to access for other reasons, specifically because they require a deeper level of discourse analysis.

Law textbooks typically stress that case reports have four parts: the facts of the case, the issue/s that the case raises, the law that applies, and the opinion of the judge. Most textbooks, especially if they are written for native speakers of English, say little more, leaving law students to assume that these four parts can essentially be found in that order in whatever case report they need to read and study. In the context of a law school in the US or Britain, this may suffice, since students presumably would have skimming skills adequate to help them find these things in the text and would have ample access to the texts of a plethora of case reports in their other content-area law classes. In the context I have described however, where non-native speakers must read totally unfamiliar documents and have little access to libraries in which to research the laws which the reports cite, the "it-has-four-parts" explanation is misleading and thus quite unhelpful. In reality, a judge is free to structure his or her discussion of a case in any way he or she sees fit. The student looking for four discrete parts will soon become frustrated. What is crucial, therefore, in a workbook like the one I envision is to try to help students see that case reports are written from the perspective of the author. The judge is a writer who is trying to persuade an audience to see things his or her way. It is the reader's task to perceive the structure any given judge has created to "make the case." In Chapter 2, then, my objective is to help

students to perceive the variety of persuasive structures they might encounter in reading case reports.

Another typical difficulty for students reading case reports, vis-à-vis content, is their unfamiliarity with the laws being cited in them. This problem is ultimately addressed by a student's whole law education. A workbook like the one I have created cannot focus on this aspect of reading comprehension, except perhaps to provide some footnote explanations of laws cited in the case reports the workbook anthologizes.

C. Chapter 3: Articles Published in Law Journals

Of the kinds of texts considered in the workbook, published texts in law journals are the least "legal" and the most like reading material assigned in any other undergraduate or graduate courses. Articles are academic papers, usually argumentative. What is taught in Chapter 2 about understanding the perspective from which the author comes, therefore, can be "recycled" in this chapter. Nevertheless, reading and writing about law journal articles forms the third and last, rather than a first or second, chapter of the workbook because journal articles are even more discursively complex than case reports. They may also use more difficult surface language.

Additional difficulty is created, as it is by all academic articles, when the student is unfamiliar with the subject under discussion. Chapter 3 explicitly addresses the issue that the author is writing to an ideal audience assumed to be knowledgeable about the subject matter, and rarely is a student yet a full-fledged member of this ideal audience. It addresses this issue by discussing language that is "allusive," that is, surface language that uses words which allude to a larger conceptual field (e.g. Marxism, historical events, legal developments within a country, etc.) about which the student may be unfamiliar. Often students are so unfamiliar with these concepts that they do not even realize that they have missed an allusion. For instance,

encountering the new "vocabulary" word *superstructure*, they may be unaware that the author is alluding to a complex subject central to Marxist thought.

D. Plans for Evaluation

At present, plans are to evaluate the final draft form of the manuscript of the workbook in three stages and to involve ESL professionals, law professors, and students in the target audience in doing so:

1. Get feedback about the workbook, especially about the writing exercises, from specialists in ESL education at the undergraduate level.
2. Get feedback about portions of the workbook from professors currently teaching law at Tumaini, including those who at present have joint appointments at Tumaini and at the University of Dar es Salaam, and from several EAP specialists teaching legal English in the US.
3. Having revised the workbook based on feedback from those involved in stages 1 and 2 above, to use the workbook for a course to be taught at Tumaini in 2004 and to elicit student feedback about additions, deletions, and changes that should be made based on that piloting of the text.

VI. CONCLUSION

The question with which I began was whether legal English was similar to the language of other academic disciplines, so that one could expect that teaching it would be consonant with teaching any other English for Academic Purposes course to non-native English speakers. The answer is a qualified "No." Legal English has a character distinct enough from the language of other academic disciplines that it needs to be taught differently, or at least non-generically. For law students to learn to write clearly about the law is not good enough. Although no one

disputes the benefits to be gained when governments pursue Clear English reforms in creating documents, and although writers in every discipline should try to learn to write clearly, trying to teach law students merely to write clear prose misses the point. Unfortunately, this is what many American legal-writing textbooks seek to do. It would be better to have legal writing textbooks grounded in discourse analysis.

The second question was how a NNS legal student could effectively and efficiently learn legal English. This is related to the first question. Since legal English is a special language created by a specialist community, the more a law student can learn about how and why that group communicates as it does, the more effectively and efficiently s/he can learn to read and write legal English.

The third question concerns teaching Tanzanian law students in the absence of print materials, especially of legal documents and analyses. My workbook on legal English attempts to address this issue by providing exemplars on which to practice reading and writing, with the advice on how to do so rooted in discourse analysis and in ESP research.

In creating a workbook for a specific situation, I have tried to bring to bear the insights I have gained from teaching in the Tanzanian context, from searching for existing Tanzanian textual materials, and from researching how EAP specialists and others teach how to read and write legal English. I have also brought to bear my nearly three decades of teaching undergraduates, both native and non-native speakers of English, who have studied in the US. I expect, when it is refined, for the end result to be viable and helpful to a group of students previously overlooked by those developing needed course materials.

Appendix E

Syllabus 1999: Legal Communication Course Tumaini University Dr. Sally S. Harris
Iringa, Tanzania

Note: Abbreviations are *CL* for *Criminal Law* and *LW* for *Legal Writing.*

Week	Dates	Assignments		
I	6/1-3	Read/Study:	*CL,* Ch. 2, "Murder" *LW*, Ch. 3, "Paragraphs, Paragraph Blocks, and Transitions"	
		Write:	TEC paragraph (as Triads)	**DUE: June 6**
II	6/8-10	Read/Study:	*CL,* Ch. 3, "Criminal Damage" *LW*, Ch. 1, "Purposes and Forms of Legal Writing" *LW*, Ch. 2, "Large-Scale Organization"	
		Write:	IRAC paragraph (as Individuals)	**DUE: June 15**
III	6/15-17	Read/Study:	*CL,* Ch. 4, "*Actus Reus*" *LW*, Ch. 5, "Language in the Legal Setting" *LW*, Ch. 6, "The Total Product: Advisory Letters to Lay Persons; Office Research Memoranda"	
		Write:	Office Research Memorandum (Triads)	**DUE: June 22**
IV	6/22-24	Read/Study:	*CL,* Ch. 5, "*Mens Rea*" *LW*, Ch. 8, "Punctuation, Grammar, and Mechanics"	
		Write:	Letter to a Client (as Individuals)	**DUE: June 29**
V	6/29-7/1	Read/Study:	*CL,* Ch. 16, "Manslaughter" *LW*, Ch. 4, "Sentence Design"	
		Write:	Essay Exam Study Questions (as Triads)	**DUE: July 2**
VI	7/8 (Thursday)		Cumulative Final Examination with Objective and Essay Sections	

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[1] My chief informant was and continues to be Andrew L. Mollel, who took his L.L.B. at Dar in 1997. (Between 1999 and 2001, he went to Lund University in Sweden to take masters-level coursework. For the 2001-2 academic year, he has returned to Tumaini, where he is now Dean of the Faculty of Law.)

[2] I had two different forms of the test, labeled "Topic A" and "Topic B." Section II of each TPK98 booklet consists of a 25-minute test labeled "Structure and Written Expression." This section contains two types of questions: "structure" and "written expression." (See Appendix B.) Section II has fifteen structure questions and forty written-expression questions, for a total of fifty-five points. A "structure" question is a cloze exercise turned into a multiple-choice item. Each item is an incomplete sentence whose blank can be properly filled in by only one of the four choices given. A "written expression" question consists of a sentence with four of its words or phrases underlined. Only one of these four underlined segments is incorrect, and the student is to designate which one. Because the structure items must also be framed as multiple-choice items, the student is not asked to make appropriate corrections, but the assumption is that he or she could do so if it were required.

[3] Reader-Response literary criticism is exemplified in the work of critics like Wolfgang Iser (tr. 1978) and Stanley Fish (1972).) Reader-response literary theorists, coming to the fore in the 1970's, reacted against the hegemony of the New Critics (flourishing from 1925-1975). New Critics had argued for locating the meaning of a text squarely and solely in the text itself. For a New Critic, the text is not only independent from the reader (See Wimsatt and Beardsley (1954) "Affective Fallacy" in *The Verbal Icon*) but even from the intention of the author (See their "Intentional Fallacy" in *The Verbal Icon*). In contrast to New Critics, Reader-Response critics view the text as coming into being as the reader reads; they hold that a text scarcely exists until the reader reads it.

When he published *Analyzing Genre* (1993), Bhatia was Senior Lecturer in English Language at the National University of Singapore where he taught a course on Varieties of Written and Spoken English. By the late 1970's, he had begun his doctoral studies at the University of Aston in Birmingham, England, where John Swales was then teaching. Bhatia earned his Ph.D. in 1982, and in 1983 co-authored with Swales an article on legal English. Later, Bhatia interacted with Christopher Candlin of Macquairie University in Sydney, Australia, the

General Editor of the Longman series publishing Bhatia's book. Bhatia belongs in the small but influential group of scholars [Swales (1981), Candlin (1976, 1980), Widdowson (1983), Halliday (1986, 1989), Selinker (1972, 1974), and Trimble (1985)] using genre and discourse analysis to illuminate issues of interest to ESP specialists.]